S.B. CIVIL WRIT PETITION NO.7054/2003
(Leela Devi vs. Addl. District Judge & Ors.)

Date :: 28.03.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.Anil Vyas, for the petitioner.
Mr.S.R. Yadav, for the respondents.

Heard learned counsel for the petitioner.

In this writ petition, the petitioner is challenging the order Exhibit-4 dated 10th December, 2002 passed by learned Civil Judge (Junior Division) & Judicial Magistrate (First Class), Bikaner passed upon an application filed under Order 39 Rules 1 and 2 read with Section 151 CPC, whereby learned Civil Judge dismissed the application for temporary injunction. The petitioner preferred an appeal before Additional District Judge No.1, Bikaner against the order dated 10th December, 2002 passed by the trial court. The said appeal was also dismissed. This writ petition has been filed in the year 2003 and no stay was granted by this Court. The petition is pending since last three years.

It is contended by learned counsel that petitioner filed a suit against non-petitioners Nos.3 and 4 stating that he is owner of the land in question and respondents Nos.3 and 4 encroached the land which is shown in the map. It is also stated that respondents are

further going to encroach upon the land which is a Chowk and it is a government land and there is no reply to controvert the said fact. It is also contended that the petitioner preferred suit for permanent injunction and mandatory injunction. The learned trial court after considering facts and grounds of the application for temporary injunction as well as reply filed by the respondents, rejected the application for temporary injunction, while holding that there is no prima facie case and balance of convenience and irreparable loss in favour of plaintiff. The appellate court also affirmed the order passed by the trial court.

I do not find any reason to interfere with the findings of both the courts below with regard to rejecting the application filed for temporary injunction, therefore, the petition is dismissed. However, learned trial court is directed to expedite the trial, as suit is pending before the court since 2002. It is expected from the trial court that suit will be decided preferably within a period of six months.

[GOPAL KRISHAN VYAS],J.

A.K. Chouhan/-